

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1159 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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RAMAKANT GOVIND NADKARNI

Versus

DINSHA NAVRORJJI MANDHORA & 3 OTHERS

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Appearance:

MR SS BELSARE for Petitioner

MRS MF BHAGALIA for Respondent No. 1

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 31/07/96

ORAL JUDGEMENT

Whether the petitioner tenant is entitled to protection of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (Bombay Rent Act) or not is the main question which has arisen for examination and adjudication in this revision petition under section 29(2) of the Bombay Rent Act. Interpretation and applicability of the provisions of section 12(3)(a) and 12(3)(b) of the Bombay Rent Act is involved in this

petition.

The petitioner is the original defendant tenant in respect of residential premise bearing Municipal No.1297 situated in bazar Road, in Bilimora town which is hereinafter referred to as the demise premises. The respondents are the owners of the demise premises and they are the original plaintiffs who initiated legal battle by filing regular Civil Suit No.53/74 in the court of Civil Judge (J.D.), Gandevi against the petitioner tenant for possession on the ground of arrears of rent for more than six months. The demise premises were let by a rent note dated 10.10.67 for a monthly rent at the rate of Rs.75/- payable every month. The notice for arrears of rent was not replied to or complied with. Therefore, suit was filed for possession.

The petitioner tenant who is the original defendant appeared and resisted the suit by filing written statement Ex.15, inter alia, contending that he is the tenant in respect of the demise premises but not in a monthly rent of Rs.75/-. According to his case, he is yearly tenant and he had paid rent to the Manager of the respondents upto 30.9.73 and that he was in arrears of rent from 1.10.73 and not from 1.10.72. It was also contended by the tenant that he had paid rent to the power of attorney holder of the respondents, but the rent was refused. The dispute of standard rent came to be raised in the written statement and the tenant claimed that the standard rent should be fixed at Rs.60 per month instead of Rs.75/-. The Trial Court, in the light of the pleadings between the parties raised issue at Ex.16 and after appreciation of the evidence reached to the conclusion that the respondents original plaintiff have proved that the petitioner tenant was in arrears of rent for more than 6 months and that he neglected to make payment within one month after the receipt of notice. It was also found by the Trial Court that the tenant was not ready and willing to pay standard rent and permitted increases and therefore, he is not entitled to the protection of the provisions of section 12(3)(b) of the Bombay Rent Act. Consequently, eviction decree came to be passed against the tenant on 6.8.77.

Being aggrieved by the judgment and decree for possession and arrears of rent, the petitioner tenant questioned its legality and validity by filing appeal before the District Court, Bulsar at Navsari. Regular Civil Appeal No.96/77 filed by the petitioner tenant against the judgment and decree of the Trial Court came to be dismissed on 22nd August, 1979. Hence this revision

application under section 29(2) of the Bombay Rent Act.

It can be seen from the facts and circumstances emerging from the record of the present case that the petitioner tenant was a monthly tenant and he was required to pay an amount of Rs.75/- per month by way of rent over and above the taxes except house tax. The rent was payable by month. Section 12(3)(a) is intended with a view that a tenant does not abuse his right conferred by the Bombay Rent Act by remaining in arrears for more than six months. Section 12(3)(a) reads as under:

"12. (3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increase, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession."

It can be summarised from the aforesaid provisions of section 12(3)(a) that the requirements of the said provisions so as to attract the eviction decree against the tenant are as follows:

- (1) Rent is payable by the month
- (2) Amount of the standard rent and permitted increases is not disputed.
- (3) Standard rent or permitted increases are unpaid for six months or more;
- (4) Tenant has received notice under S.12(2);
- (5) Tenant has neglected to pay the standard rent and permitted increases for such period within a period of one month after receipt of the notice under S.12(2).

The first requirement is that the entire rent must be payable by month. This requirement is not satisfied in the present case, as admittedly tenant was liable to pay taxes including education cess other than house tax over and above the agreed monthly rent of Rs.75/-. Therefore, the entire rent could not be said to be payable by month as other taxes are not payable by month. Therefore, the first requirement in order to attract the rigours of the

provisions of section 12(3)(a) is not satisfied. With the result, the provisions of section 12(3)(a) would not be attracted.

The question then arises is as to whether the petitioner-tenant is entitled to the statutory umbrella of the provisions of section 12(3)(b) of the Bombay Rent Act. The provisions before the amendment in section 12(3)(b) would be applicable. Section 12(3)(b) as then stood would be applicable to the cases as follows:

- (1) Where the arrears of rent was for less than six months, or
- (2) Where the rent may be payable yearly, quarterly or weekly or daily, or
- (3) Where a dispute about the standard rent or permitted increases had been raised by an application for that purpose within one month of the receipt of notice of demand given pursuant to sec.12(2), or
- (4) Where there was a dispute between the parties regarding the amount of arrears of rent or a dispute about deductions from the rent.

The question now requires to be considered is as to whether the petitioner-tenant is entitled to the protection of the statutory umbrella of section 12(3)(b) of the Bombay Rent Act. The following aspects are clearly established without any doubt from the evidence on record:

- (1) That the petitioner-tenant was in arrears of rent for more than 6 months at the time of service of notice under section 12(2).
- (2) The contention of the tenant that the rent was paid upto 1.10.73 is not proved. Both the courts below have concurrently held on assessment of facts and evidence that the rent was paid by the tenant upto 30.9.72 and rent was in arrears from 1.10.72. This finding of fact is quite justified and there is no reason to interfere with the same.
- (3) First notice demanding rent dated 10.7.73 was sent to the tenant and it was received by him, a copy whereof was produced at Ex.30. No reply was sent and there was no compliance also. Rent was

demanded for more than 6 months. No dispute of standard rent was also raised within one month.

- (4) Second notice demanding rent dated 2.1.74 as at Ex.23 was received by the tenant and no reply was sent and no compliance was made. The rent was in arrears for more than 14 months. No application for standard rent was filed within one month after the receipt of notice.
- (5) The Trial Court has rightly held that the rent due and payable on the date of passing of decree came to Rs.3034.70 ps. The tenant had not paid rent regularly during the course of the proceedings. Since dispute of standard rent raised by the tenant came to be decided along with the suit, the Trial Court rightly granted time to tenant to pay arrears of rent as per the rent fixed by the Court on or before 4.8.77. It is an admitted fact that the petitioner tenant failed to avail the benefit by paying the rent within the time granted by the Court. Not only that there was no any move or application for extension of time.
- (6) The Trial Court and the Appellate Court concurrently and consistently held that the dispute raised by the tenant that the rent was paid upto 1.10.73 is not correct and the rent is found due by both the Courts from 30.9.72. This finding of fact is quite justified and cannot be interfered with in this revision wherein the scope is very limited.
- (7) It is also an admitted fact that the petitioner tenant did not pay rent during the pendency of appeal. No amount of rent is reported to have been paid during the pendency of the revision.

In view of the aforesaid factual scenario and the proposition of law, the provisions of section 12(3)(a) would not be attracted in the present case. However, the provisions of section 12(3)(b) would be attracted. The entire rent was not payable by month and the tenant was liable to pay taxes over and above the amount of Rs.75 per month. Since the tenant was liable to pay taxes including the education cess, the provisions of section 12(3)(b) would be attracted. In order to earn the protection of the provisions of section 12(3)(b), the tenant is obliged to satisfy the requirements of section 12(3)(b). One of the requirements of the provisions of

section 12(3)(b) as it then stood prior to the amendment is that the tenant should pay rent regularly. The regularity contemplated by the provisions of section 12(3)(b) as it then stood, of course, may not be a punctuality of clock-wise precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of time or intervals at which the rent falls due. Thus, according to the settled proposition of law, when the rent is payable by month, the tenant must, if he wants to earn the protection of the provisions and benefits of clause (b) of section 12(3), must tender or pay it every month or as it falls, due or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 3 to 4 months, he cannot be said to be a protected tenant and the Court has no discretion to treat such irregularities in payment of rent as substantial compliance. Therefore, the tenant who does not pay rent regularly during the pendency of the suit or appeal is not entitled to seek protection of the provisions of section 12(3)(b) of the Bombay Rent Act. Even payment of rent irregularly or at interval of 3 to 4 months in the Court would not come to the rescue of the tenant. The Court has no discretion to treat such a conduct of the tenant of making payment of rent as substantial compliance with the mandate of the said clause. The evidence on record shows that the petitioner tenant was very irregular in payment of rent. In fact, he paid rent for some time irregularly during the pendency of the suit. Thereafter, he did not pay rent as a result of which rent was in arrears of Rs.3034.70 ps on the date of passing of decree. However, since the question of standard rent came to be determined along with the suit, the tenant was entitled to some time so as to make payment and avail of the benefit of section 12(3)(b). The Trial Court did afford such an opportunity to the tenant while passing decree on 28.7.77. The tenant was given time upto 4.8.77 so that he could pay up the rent and save himself from the ejectment decree. It is an admitted fact that the tenant has failed to avail the benefit as he did not pay the arrears of rent during time granted by the Trial Court while passing the decree for eviction nor did he apply for extension of time for payment of rent. With the result, the tenant has disqualified himself from the protection by his conduct in not making the payment of rent either during the pendency of the suit or even after during the period of time granted by the Trial Court or thereafter during the pendency of appeal. In fact, this is a gross case of negligence and indifference on the part of the petitioner

tenant in payment of rent. With the result, the tenant is liable to be ejected by a decree for possession under the provisions of section 12(3)(b) of the Bombay Rent Act.

In view of the aforesaid position, the impugned decree of possession and arrears of rent recorded by the Trial Court and confirmed by the Appellate Court is quite justified and the present revision under section 29(2) of the Bombay Rent Act wherein the jurisdictional scope is very much circumscribed is found meritless requiring dismissal. In the circumstances, this revision petition is dismissed. Rule discharged. Interim relief shall stand vacated. However, there shall be no order as to costs in the circumstances of the case.

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